IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

FLORENCE D. HORTON,

Plaintiff,

v.

JO ANNE B. BARNHART, Commissioner of Social Security,

Defendant.

_____/

No. CIV.S-04-0592 DAD

ORDER RE MOTION FOR ATTORNEY FEES

Plaintiff brought this action seeking judicial review of an administrative decision denying her claim for disability benefits under the Social Security Act. See 42 U.S.C. §§ 405(g) and 1383(c). By previous order of the court, the decision of the Commissioner of Social Security ("Commissioner") denying benefits was reversed and this matter was remanded with the direction to grant benefits. Counsel for plaintiff has now filed a motion for attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412.

/////

Counsel for plaintiff seeks an award of approximately $5,500. The motion claims 36.75 hours of attorney time. Attorney fees under EAJA are set at the market rate, but capped at $125.00 per hour. See Atkins v. Apfel, 154 F.3d 986, 987 (9th Cir. 1998)(citing 28 U.S.C. § 2412(d)(2)(A)). Nonetheless, counsel for plaintiff seeks to recover attorney fees at a rate greater than $125.00 per hour to account for inflation.

Defendant opposes the motion and seeks the reduction of any EAJA fees award. Defendant argues that the position of the Commissioner was "substantially justified." Defendant also argues that the claimed 36.75 hours of attorney time expended on this case by plaintiff's counsel is unreasonable.

The EAJA provides that "a court shall award to a prevailing party ... fees and other expenses ... incurred by that party in any civil action ... brought by or against the United States ... unless the court finds that the position of the United States was substantially justified." 28 U.S.C. § 2412(d)(1)(A). See also Gisbrecht v. Barnhart, 535 U.S. 789, 796 (2002). "Fees and other expenses" include "reasonable attorney fees." 28 U.S.C. § 2412(d)(2)(A). "The statute explicitly permits the court, in its discretion, to reduce the amount awarded to the prevailing party to the extent that the party 'unduly and unreasonably protracted' the final resolution of the case." Atkins, 154 F.3d at 987 (quoting 28 U.S.C. §§ 2412(d)(1)(C), 2412(d)(2)(D)). The prevailing party must apply for attorney fees within thirty days of the final judgment in the action. 28 U.S.C. § 2412(d)(1)(B).

A party who obtains a remand for the payment of benefits in a social security case is a prevailing party for purposes of the EAJA. Shalala v. Schaefer, 509 U.S. 292, 296-302 (1993); see also Gutierrez v. Barnhart, 274 F.3d 1255, 1257 (9th Cir. 2001)("An applicant for disability benefits becomes a prevailing party for the purposes of the EAJA if the denial of her benefits is reversed and remanded regardless of whether disability benefits ultimately are awarded."). Accordingly, it is undisputed that plaintiff is a "prevailing party" in this case. It also is undisputed that plaintiff did not unduly and unreasonably protract the litigation.

As noted above, however, defendant contends that the position of the Commissioner was "substantially justified." That contention is unpersuasive. On the cross-motions for summary judgment, the Commissioner chose to defend a number of obvious flaws in the ALJ's decision. More specifically, the ALJ's treatment of the evidence including the medical evidence from plaintiff's treating sources, plaintiff's testimony, and the lay testimony of plaintiff's friend was wholly inadequate. (See Order filed September 9, 2005.) Therefore, the court finds that the position of the Commissioner was not "substantially justified." See Corbin v. Apfel, 149 F.3d 1051, 1053 (9th Cir. 1998)("While the government's defense on appeal of an ALJ's procedural error does not automatically require a finding that the government's position was not substantially justified, the defense of basic and fundamental errors such as the ones in the present case is difficult to justify."); Sampson v. Chater, 103 F.3d 918, 921 (9th Cir. 1996)(finding no substantial justification where

Commissioner "completely disregarded" substantial evidence of disability onset).

Defendant also asserts that the amount of attorney time claimed by counsel for plaintiff is unreasonable. In this regard, 28 U.S.C. § 2412(d)(2)(A) expressly provides for an award of "reasonable" attorney fees. However, "there is more to deciding what is a 'reasonable' fee than calculating a reasonable expenditure of hours times a reasonable rate." Atkins, 154 F.3d at 989 (citing Hensley v. Eckhart, 461 U.S. 424 (1983)). The court must also consider "'the relationship between the amount of the fee awarded and the results obtained.'" Id. (quoting Hensley, 461 U.S. at 437.)

Here, plaintiff's counsel secured a remand for the payment of benefits. Defendant argues that the claimed 36.75 hours of attorney time is excessive. The undersigned declines to conduct a line-by-line analysis of counsel's billing entries. See, e.g., McDannel v. Apfel, 78 F. Supp. 2d 944, 954 (S.D. Iowa 1999); Stewart v. Sullivan, 810 F. Supp. 1102, 1107 (D. Haw. 1993). However, having carefully reviewed the pending motion, the court finds the claimed 36.75 hours is a reasonable amount of attorney time to have expended on this matter. While the issues presented were straightforward, and while the court is mindful of the expertise of plaintiff's counsel, 36.75 hours is comparable to the amount of time devoted to similar tasks by counsel in other social security appeals coming before this court. The court also appreciates that social security cases are often fact-intensive and is aware of the successful result obtained

/////

by counsel. Therefore, counsel for plaintiff is entitled to an EAJA fees award of $5,600.13, which can be broken down as follows:

2004: 31.5 hours X $151.65 = $4,776.98; and

2005: 5.25 hours X $156.79 [1] = $823.15

$5,600.13

The court will order that the motion for attorney fees under EAJA be granted and that counsel for plaintiff be awarded a total EAJA award of $5,600.13.

Accordingly, IT IS HEREBY ORDERED that:

1. Counsel for plaintiff's motion for attorney fees is granted; and

2. Pursuant to EAJA, counsel for plaintiff is awarded $5,600.13 in attorney fees.

DATED: May 30, 2006.

DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

DAD:th
ddad1\orders.socsec\horton0592.fees.eaja

[1] The EAJA adjusted hourly rates set forth above were computed by multiplying the basic EAJA rate by the consumer price index for urban consumers ("CPI-U") for the year in which the fees were earned, and then dividing the product by the CPI-U in the month that the cap was imposed (which is March, 1996 for this post-amendment case). See Sorenson v. Mink, 239 F.3d 1140, 1148 (9th Cir. 2001)(detailing how the cost of living adjustment to the statutory cap is computed). The court recognizes that there is a split of authority on whether to use the national or local (or even regional) CPI to calculate the rate of inflation over the hourly EAJA rate. See Mannino v. West, 12 Vet. App. 242, 243-44 (1999)(gathering cases). The undersigned has used the national change in cost of living to adjust the cap because "if Congress had wanted to allow for the cost of living adjustments in a particular region or city, it could have done so in the statute." Stewart v. Sullivan, 810 F. Supp. 1102, 1107 (D. Haw. 1993).